

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ODELL A. GRIGGS,

Plaintiff,

v.

JANIE COCKRELL,

Defendant.

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CIVIL ACTION H-05-3210

MEMORANDUM ON DISMISSAL

Plaintiff seeks voluntary dismissal under FED. R. CIV. P. 41(a). A court exercising its discretion in considering a voluntary dismissal must follow the traditional principle that dismissal should be allowed unless the defendant will suffer some plain prejudice other than the mere prospect of a second lawsuit. *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 604 (5th Cir. 1976). No such prejudice has been shown in this case.

Plaintiff's Motion for Voluntary Dismissal Without Prejudice [Docket Entry No. 4] is GRANTED. This case is DISMISSED formally without prejudice. However, the statute of limitations will run on his claims. *Goff v. United States*, 659 F.2d 560, 562 (5th Cir. 1981) ("It is ... well established that the fact that a dismissal of an earlier suit was without prejudice does not authorize the bringing of the suit later outside of an

otherwise binding limitations period.”). Because of this, Plaintiff may seek reinstatement of this case within twenty days of entry of this order. However, if he chooses to seek reinstatement he must also submit within twenty days of entry of this order his amended complaint in full compliance with this Court’s order signed on September 21, 2005, concerning the amended complaint.

Accordingly, it is ORDERED that this action be DISMISSED without prejudice. It is further ORDERED that any fee collection order entered in this case is VACATED.

SIGNED at Houston, Texas, on this 27th day of October, 2005.



DAVID HITTNER

United States District Judge